

Message Text

CONFIDENTIAL

PAGE 01 TOKYO 06322 131103Z

53

ACTION EA-10

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NSAE-00 PA-01 USIA-06 PRS-01 L-02 SCS-03 SCA-01 /057 W

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FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 0087

INFO AMCONSUL NAHA

SECDEF WASHDC

CINCPAC HONOLULU HI

COMUSJAPAN YOKOTA JA

C O N F I D E N T I A L TOKYO 6322

CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, JA

SUBJ: SOFA: CUSTODY ARRANGEMENTS

1. FOREIGN MINISTER MIYAZAWA ASKED AMBASSADOR TO CALL ON HIM AFTERNOON MAY 13. PRIMARY CONCERN OF FOREIGN MINISTER WAS TO DISCUSS CONTROVERSY WHICH HAS ARISEN WITHIN GOJ AND LDP OVER CUSTODY ISSUE IN CONNECTION WITH FLORES CASE.

2. FOREIGN MINISTER EXPLAINED THAT IN CABINET MEETING APRIL 25 DIRECTOR GENERAL PRIME MINISTER'S OFFICE IN CHARGE OF OKINAWAN AFFAIRS UEKI ASSERTED THAT SINCE INCIDENT INVOLVING FLORES WAS CLEARLY PERPETRATED OUTSIDE DUTY AND JAPAN CLEARLY HAD PRIMARY JURISDICTION, JAPAN SHOULD TAKE CUSTODY IMMEDIATELY IN ORDER TO INVESTIGATE CASE AND PREPARE FOR PROSECUTION. FOREIGN MINISTER EXPLAINED FOREIGN OFFICE INTERPRETATION OF SOFA ARTICLE 17 PARA 5(C) THAT UNDER CIRCUMSTANCES IN WHICH FLORES HAD BEEN APPREHENDED BY U.S. SERVICEMEN AND RETURNED TO BASE, U.S. SHOULD RETAIN CUSTODY UNTIL SUSPECT CHARGED BY JAPANESE PROCURATOR. SEVERAL OTHER CABINET MINISTERS, HOWEVER, CONCERNED BY FUROR WHICH THIS CASE HAD AROUSED ON OKINAWA, CONFIDENTIAL

CONFIDENTIAL

PAGE 02 TOKYO 06322 131103Z

SIDED WITH UEKI. PRIME MINISTER FINALLY INSTRUCTED FOREIGN

MINISTER TO DISCUSS MATTER WITH USG WITH A VIEW TO HAVING CUSTODY TURNED OVER PROMPTLY TO JAPANESE AUTHORITIES. FOREIGN MINISTER EXPLAINED THAT HE HAD NOT ACTED ON THIS INSTRUCTION SINCE HE ANTICIPATED INDICTMENT WOULD SOON BE PREPARED AND CUSTODY THEN TRANSFERRED TO JAPANESE AUTHORITY. THIS IN FACT HAPPENED ON APRIL 28.

3. FOREIGN MINISTER STATED THAT SOFA ARTICLE 17 PARA 5(C) PRESENTS SOME DIFFICULTIES FOR LAYMENT TO UNDERSTAND, AS EVIDENT IN VIEW OF UEKI AND THOSE WHO SUPPORTED HIM. IN THEIR VIEW, IF FACTS OF THE INCIDENT MAKE IT IMMEDIATELY CLEAR THAT IT WAS NOT AN ON-DUTY CASE, AND THAT PRIMARY JURISDICTION CLEARLY RESTS WITH JAPAN, THEN IT IS A MATTER OF "COMMON SENSE" THAT JAPAN TAKE IMMEDIATE CUSTODY IN ORDER TO PROCEED WITH INVESTIGATION AND PROSECUTION, IF WARRANTED. FOREIGN MINISTER SAID IT COULD BE ARGUED THAT THE PURPOSE IN ARTICLE 17 PARA 5(C) IS TO INSURE THAT THE U.S. RETAINS CUSTODY OF AN ACCUSED WHO IS "IN THE HANDS OF THE U.S.", BUT THAT THE PROVISION DOES NOT NECESSARILY REQUIRE THE U.S. TO "KEEP HIM IN ITS HANDS".

4. FOREIGN MINISTER THEN SAID HE HAD TWO POINTS WHICH HE WISHED TO MAKE FOR USG CONSIDERATION: (A) THAT U.S. MILITARY AUTHORITIES TAKE RENEWED AND MORE EFFECTIVE MEASURES TO TIGHTEN DISCIPLINE IN OKINAWA TO PREVENT REPETITION OF SUCH INCIDENTS; (B) WHILE LEAVING QUESTION OF LEGAL INTERPRETATION TO EXPERTS, FOREIGN MINISTER WISHED TO INFORM AMBASSADOR THAT IN FUTURE WITH RESPECT TO SUCH SERIOUS CASES AS FLORES INCIDENT IN WHICH OFFENSE IS CLEARLY OFF-DUTY AND JAPAN CLEARLY HAS PRIMARY JURISDICTION, "IT IS CONCEIVABLE THAT OUR SIDE MAY REQUEST YOU THROUGH DIPLOMATIC CHANNELS TO IMMEDIATELY TURN OVER CUSTODY TO JAPANESE AUTHORITIES."

5. AMBASSADOR REPLIED THAT WE WOULD GIVE FOREIGN MINISTER'S VIEWS SERIOUS CONSIDERATION. HE POINTED OUT, HOWEVER, THAT FRAMERS OF SOFA HAD DEVISED SPECIFIC PROCEDURES TO BE FOLLOWED IN SUCH CASES AS THIS IN ORDER TO PROTECT THE RIGHTS OF THE ACCUSED. HE EXPLAINED THAT USG THERE-
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 TOKYO 06322 131103Z

FORE MUST BE SCRUPULOUS IN FOLLOWING THOSE PROCEDURES. THESE PROCEDURES MOREOVER ARE EMBODIED IN THE SOFA AGREEMENT ITSELF WHICH HAS THE STATUS OF LAW IN THE U.S. THE AMBASSADOR SAID THAT HE WOULD PRESUME THAT THE FOREIGN MINISTER IS NOT URGING US TO ATTEMPT TO CHANGE THE LAW. FOREIGN MINISTER HOSTILY REPLIED THAT HE HAD NOT SUCH THOUGHT. AMBASSADOR CONCLUDED ON THIS POINT BY SAYING WE WOULD EXPLORE THE PROBLEM RAISED BY THE FOREIGN

MINISTER. AMBASSADOR ALSO NOTED THAT OUR MILITARY COMMANDERS ON OKINAWA WERE SERIOUSLY CONCERNED WITH THE PROBLEM OF CRIME, HAD TAKEN VIGOROUS STEPS TO DEAL WITH THIS PROBLEM, AND THAT THESE STEPS HAD SHOWN SOLID RESULTS. HE ACKNOWLEDGED, HOWEVER, THAT OBVIOUSLY WE MUST DO AN EVEN BETTER JOB, PARTICULARLY IN LIGHT OF HIGH SENSITIVITY IN OKINAWA TO SUCH INCIDENTS. THE FOREIGN MINISTER THANKED THE AMBASSADOR FOR HIS UNDERSTANDING OF THE GOJ POSITION.

6. AT THE SUGGESTION OF THE FOREIGN MINISTER IT WAS AGREED THAT IN BRIEFING THE PRESS ON THIS MATTER, THE FOREIGN MINISTRY WOULD REFER ONLY TO THE FOREIGN MINISTER'S EXPRESSION OF CONCERN OVER THE INCIDENCE OF VIOLENT CRIMES IN OKINAWA AND HIS URGENT REQUEST THAT U.S. AUTHORITIES TAKE ALL POSSIBLE MEASURES TO PREVENT SUCH INCIDENTS. NOTE WOULD BE TAKEN OF THE AMBASSADOR'S ACKNOWLEDGEMENT OF THE SERIOUSNESS OF THESE INCIDENTS AND HIS ASSURANCE THAT WE WOULD TAKE ALL POSSIBLE STEPS TO PREVENT THEM.

7. DIRECTOR GENERAL AMERICAN AFFAIRS YAMAZAKI SUBSEQUENTLY INFORMED DCM THAT IF FOREIGN MINISTER IS PRESSED IN DIET INTERPELLATIONS (FOREIGN MINISTER EXPECTS STIFF QUESTIONING ON THIS INCIDENT IN OKINAWAN AFFAIRS COMMITTEES OF BOTH HOUSES), HE MAY STATE THAT IN FUTURE IN CERTAIN CASES WHERE JAPAN CLEARLY HAS PRIMARY JURISDICTION, THE JAPANESE GOVERNMENT MAY REQUEST THE U.S. SIDE TO TRANSFER CUSTODY IMMEDIATELY. YAMAZAKI ASSURED DCM, HOWEVER, THAT FOREIGN MINISTER WOULD MAKE NO REFERENCE TO FACT THAT HE HAD RAISED THIS POSSIBILITY WITH AMBASSADOR.

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